

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION ATHLETIC  
GRANT-IN-AID CAP ANTITRUST  
LITIGATION

No. 14-md-2541 CW

MARTIN JENKINS, et al.,

No. C 14-2758 CW

Plaintiffs,

ORDER DENYING  
MOTION FOR  
JUDGMENT ON THE  
PLEADINGS

v.

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION, et al.,

Defendants.

Defendants, the National Collegiate Athletic Association (NCAA) and a group of Division I conferences, have filed a motion for judgment on the pleadings, seeking an order dismissing Jenkins in its entirety and dismissing the portion of the consolidated action that seeks injunctive relief. Plaintiffs in both actions have filed a consolidated opposition and Defendants have filed a reply. Having considered the parties' papers, the record in this case and argument, the Court DENIES the motion.

## BACKGROUND

Plaintiffs are student-athletes who played NCAA Division I Football Bowl Subdivision football<sup>1</sup> and men's and women's basketball between March 5, 2014 and the present.

Plaintiffs' challenges relate to NCAA restrictions on the compensation of student-athletes for their athletic performance. The NCAA sets a cap on the grant-in-aid (GIA) that student-athletes may receive.<sup>2</sup> At the time these complaints were filed, the GIA was capped at the value of tuition, fees, room and board and required course books. After Plaintiffs initiated this litigation, the NCAA permitted conferences to allow schools to compensate student-athletes with GIAs for up to their cost of attendance.

Consolidated Plaintiffs and Jenkins Plaintiffs allege in their complaints that the NCAA and its member institutions<sup>3</sup> violate federal antitrust law by conspiring to impose the cap on the amount of monetary and in-kind compensation a school may

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<sup>1</sup> The NCAA organizes member schools into Divisions I, II and III. Division I football includes two subdivisions: the Football Bowl Subdivision (FBS) and the Football Championship Subdivision (FCS).

<sup>2</sup> A grant-in-aid is a scholarship or form of financial aid that the NCAA does not consider "pay or the promise of pay for athletics skill" and that meets certain NCAA requirements. See 2014-15 NCAA Manual at 57 (Bylaw 12.01.4); 189 (Bylaw 15.02.5).

<sup>3</sup> Jenkins Plaintiffs name as conference Defendants the Atlantic Coast Conference; the Big 12 Conference; the Big Ten Conference; the Pac-12 Conference; and the Southeastern Conference. Consolidated Plaintiffs name all of those as well as the American Athletic Conference; Conference USA; the Mid-American Conference; the Mountain West Conference; the Sun Belt Conference; and the Western Athletic Conference.

1 provide a student-athlete. Plaintiffs assert that, without the  
2 NCAA's cap on compensation, schools would compete in recruiting  
3 student-athletes by providing more generous compensation.  
4 Plaintiffs seek an injunction against the NCAA's rules limiting  
5 compensation for student-athletes. Consolidated Plaintiffs seek,  
6 in addition to an injunction, damages for the difference between  
7 the GIAs awarded and the cost of attendance.

8 A. O'Bannon v. NCAA

9 In O'Bannon v. NCAA, a plaintiff class alleged that the NCAA  
10 and its members conspired to fix at zero the amounts paid to  
11 Division I men's football or basketball players for the use of  
12 their names, images and likenesses (NILs) in violation of the  
13 Sherman Act, 15 U.S.C. § 1. Following a bench trial, the Court  
14 entered findings of fact and conclusions of law in favor of the  
15 plaintiffs, determining that the NCAA's rules were an unlawful  
16 restraint of trade. The Court concluded that there were less  
17 restrictive alternatives to the NCAA's rules and enjoined the NCAA  
18 and its member schools from agreeing to (1) prohibit deferred  
19 compensation of an amount less than \$5,000 per year for the  
20 licensing or use of the plaintiffs' names, images, and likenesses,  
21 or (2) prohibit scholarships up to the full cost of attendance at  
22 the plaintiffs' schools. The NCAA timely filed a notice of appeal  
23 to the Ninth Circuit. On September 30, 2015, the Ninth Circuit  
24 decided the NCAA's appeal. The panel affirmed the Court's finding  
25 of an antitrust violation and affirmed the remedy relating to  
26 scholarships. However, the majority reversed the portion of the  
27 permanent injunction related to deferred compensation. O'Bannon  
28 v. NCAA, 802 F.3d 1049, 1079 (9th Cir. 2015). Both parties'

1 petitions for writ of certiorari in the United States Supreme  
2 Court are currently pending.

3 LEGAL STANDARD

4 Rule 12(c) of the Federal Rules of Civil Procedure provides  
5 that "[a]fter the pleadings are closed--but early enough not to  
6 delay trial--a party may move for judgment on the pleadings."  
7 Such a motion, like a motion to dismiss for failure to state a  
8 claim, addresses the sufficiency of a pleading. Judgment on the  
9 pleadings may be granted when the moving party clearly establishes  
10 on the face of the pleadings that no material issue of fact  
11 remains to be resolved and that the moving party is entitled to  
12 judgment as a matter of law. Hal Roach Studios, Inc. v. Richard  
13 Feiner & Co., 896 F.2d 1542, 1550 (9th Cir. 1989). In testing the  
14 sufficiency of a pleading, the well-plead allegations of the non-  
15 moving party are accepted as true, while any allegations of the  
16 moving party which have been denied are assumed to be false. Id.  
17 at 1550. However, the court need not accept conclusory  
18 allegations. W. Mining Counsel v. Watt, 643 F.2d 618, 624 (9th  
19 Cir. 1981). The court must view the facts presented in the  
20 pleadings in the light most favorable to the non-moving party,  
21 drawing all reasonable inferences in that party's favor, General  
22 Conference Corp. of Seventh Day Adventists v. Seventh-Day  
23 Adventist Congregational Church, 887 F.2d 228, 230 (9th Cir.  
24 1989), but need not accept or make unreasonable inferences or  
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1 unwarranted deductions of fact. McKinney v. De Bord, 507 F.2d  
2 501, 504 (9th Cir. 1974).

### 3 DISCUSSION

4 Defendants argue that the Ninth Circuit's decision in  
5 O'Bannon forecloses Plaintiffs' challenge to the NCAA's current  
6 rules because the Ninth Circuit held that "offering [student-  
7 athletes] cash sums untethered to educational expenses" was not a  
8 less restrictive alternative to the NCAA's current rules under the  
9 rule of reason. 802 F.3d at 1078. The NCAA already permits its  
10 members to offer GIA equal to the Cost of Attendance. However, as  
11 Plaintiffs point out, in this case, they also challenge rules  
12 prohibiting the provision of other "benefits" and "in-kind"  
13 compensation as well as cash compensation. See, e.g. Jenkins  
14 Complaint at ¶¶ 41-42; CAC at ¶ 192. Accordingly, as Plaintiffs  
15 assert, Defendants' motion for judgment on the pleadings is not  
16 well taken. The Ninth Circuit's decision in O'Bannon simply  
17 forecloses one type of relief Plaintiffs previously sought: cash  
18 compensation untethered to educational expenses. While O'Bannon  
19 is binding on this Court, it does not provide the basis for  
20 judgment on the pleadings. Motions for judgment on the pleadings  
21 are "designed to dispose of cases where the material facts are not  
22 in dispute and a judgment on the merits can be rendered by looking  
23 to the substance of the pleadings and any judicially-noticed  
24 facts." Holloway v. Best Buy Co., Inc., 2009 WL 1533668, \*3 (N.D.  
25 Cal.). The Ninth Circuit's decision in O'Bannon limits the types  
26 of relief Plaintiffs may seek but it does not provide a basis upon  
27 which a judgment on the merits can be rendered.  
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CONCLUSION

For the foregoing reasons, Defendants' motion for judgment on the pleadings is DENIED. (Case No. 14-2541, Docket No. 373; Case No. 14-2758, Docket No. 201)

IT IS SO ORDERED.

Dated: August 5, 2016



CLAUDIA WILKEN  
United States District Judge